

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

JAMES H. STERN

PLAINTIFF

VS.

CIVIL ACTION NO. 3:11cv98-CWR-FKB

CHRISTOPHER B. EPPS,

DEFENDANT

REPORT AND RECOMMENDATION

This matter is before the Court on the Motion to Set Aside Default of Clerk (Docket No. 26). The Court has entered an Order of Referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure. Because Judge Starrett has previously set aside the Clerk's Entry of Default in this case, the present Clerk's Entry of Default (Docket No. 25), should also be set aside. As Judge Starrett stated in his Order,

The instant civil action is governed by the Prison Litigation Reform Act, 42 U.S.C. § 1997e and 28 U.S.C. § 1915A. Pursuant to 42 U.S.C. § 1997e(g)(1), “[n]o relief shall be granted to the plaintiff unless a reply has been filed.” Moreover, “defendants do not have to respond to a complaint covered by the PLRA until required to do so by the court, and waiving the right to reply does not constitute an admission of the allegations in the complaint.” *Jones v. Bock*, 549 U.S. 199, 213-14 (2007). Therefore, the plaintiff cannot obtain a default judgment against the defendant in this matter. Consequently, the Court finds good cause to set aside the Clerk's Entry of Default [11].

Order at 2 (Docket No. 14)(citations omitted). For the same reasons, the Plaintiff's Motion for Clarification (Docket No. 30)<sup>1</sup> and Motion for Clerk's Entry of Default (Docket No. 31) should be denied. Moreover, the Defendant has filed both an Answer and a Motion to Dismiss in this action.

The parties are hereby notified that failure to file written objections to the proposed

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<sup>1</sup>The Court also construes this Motion for Clarification (Docket No. 30) as a response to the Defendant's Motion to Set Aside Default of Clerk (Docket No. 26).

findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636, Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

RESPECTFULLY SUBMITTED, this the 21st day of April, 2011.

/s/ F. Keith Ball  
UNITED STATES MAGISTRATE JUDGE